THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.18368 OF 2004

DATED: 01-03-2007

BETWEEN

M/s. Ravi Wines, Kundurpi,
Anantapur District, Rep. by
its Proprietor Sri Y. Venkata
Ramana, S/o. Y. Thimmappa,
R/o. Vidyanagar, Kalyandurg,
Anantapur District.

...PETITIONER

AND

The Prohibition & Excise Superintendent,
Anantapur, Anantapur District and another.

...RESPONDENTS

ORDER:

Petitioner seeks a Writ of Mandamus to declare the action of the respondents in demanding excess rental fee of Rs.3,00,000/- for the excise years 2002-2003 and 2003-2004 vide letter dated 20.09.2004 issued by the second respondent and the proceeding No.Rc.No.329/2004/D dated 28.08.2004 issued by the first respondent as illegal and arbitrary.

2. Petitioner is the licence holder of IL-24 bearing licence No.354 dated 24.02.2002 and carrying on the business for the last two years at Kundurpi Village, Anantapur District. After expiry of the lease period the licence was renewed by paying a rental fee of Rs.3,00,000/- and the lease period was extended from 01.04.2004 to 31.07.2004 on payment of Rs.1,00,000/-. While so, the first respondent issued proceedings Rc.No.A1/352/04 dated

05.06.2004 fixing the licence fee of Rs.4,50,000/- for excise year 2004-2005 and directed the petitioner to pay additional amount of Rs.50,000/- as licence fee for the period from 01.04.2004 to 31.07.2004 stating that the population in Kundurpi village is 10,672 as per the Registrar General and Census Commissioner of India.

3. It is the case of the petitioner that as per the certificate issued by the Mandal Revenue Officer in No.L.Dis.No.170/2004 dated 17.06.2004 the population of Kundurpi village is 8,435 as per Census 2001 and as per the norms of the Government the annual increase in population is taken at 3.68% per annum, which would come to 8,739, which is less than 10,000 for the excise year 2004-2005.

4. There is no dispute that as per Rule 25 of the Andhra Pradesh Indian Liquor and Foreign Liquor Rules, 1970 read with Schedule at Sl.No.8 (b) as amended in G.O.Ms.No.151 Revenue (Ex-II) Department dated 30.03.2002 the licence fee of IL-24 shop where the population of the village is above 10,000 but below 50,000 is fixed at Rs.4,50,000/-. The respondents have demanded an additional amount Rs.50,000/- on the ground that as per census figures furnished by the Registrar General & Census Commissioner of India, the population of Kundurpi village is 10,672. However, a Division Bench of this Court in ***THE COMMISSIONER OF PROHIBITION & EXCISE V.***

M/S. MAYURI WINES in W.A.No.1978 of 2002 dated 27.11.20003 held that the expression village used in the schedule appended to the Rules is required to be understood as a revenue village and the population of a hamlet cannot be taken into consideration for the purpose of fixing licence fee with reference to the schedule appended to the Rules. If the petitioner herein disputes the figures with regard to the population based on the report of the Mandal Revenue Officer it is for him to file a civil suit to establish the said disputed questions of fact, which cannot be decided in a writ petition. However, I am of the opinion that the petitioner has not been able to provide

ample evidence to show that the population of the village in question is less than 10,000.

The writ petition is accordingly dismissed. There shall be no order as to costs.

_____

V. ESWARAIAH, J

March 1, 2007
DSK